

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MATTHEW WILEY,

PLAINTIFF,

:C. A. NO. 07-728 (JJF)

v.

STAR CHRYSLER/JEEP, LLC, NEW
CASTLE INSURANCE, LTD.,
and BLUE CROSS BLUE SHIELD
OF DELAWARE,

DEFENDANTS.

**DEFENDANTS' MOTION TO COMPEL DEPOSITION OF
PLAINTIFF MATTHEW WILEY AND TO EXTEND FACT DISCOVERY
DEADLINE TO COMPLETE DEPOSITION OF PLAINTIFF MATTHEW WILEY**

Defendants, Star Chrysler/Jeep, LLC, New Castle Insurance Ltd. and Blue Cross Blue Shield of Delaware, by and through their undersigned counsel, pursuant to Fed. R. Civ. P. 26 and 37 hereby move this Honorable Court to compel Plaintiff Matthew Wiley to appear for a deposition in this case. Defendants further move this Honorable Court to extend the fact discovery deadline, currently set to close after May 1, 2008, solely to permit the completion of the deposition of Plaintiff Matthew Wiley. In support of this motion, Defendants state as follows:

1. This case was commenced November 14, 2007 by Plaintiff. This is a case under ERISA. See Dkt. No. 1.

2. Defendants appeared in the action and answered the Amended Complaint on December 18, 2007. See Dkt. Nos. 9-11.

3. A proposed Scheduling Order was filed with the Court on January 11, 2008 after a telephone hearing with Magistrate Judge Thynge on January 7, 2008. See Dkt. Nos.

13-15. The docket does not reflect that the Scheduling Order was ever entered by the Court as the case was reassigned to Your Honor on February 1, 2008. See Dkt. Entry dated February 1, 2008. Accordingly, Defendants file this motion to extend the agreed-upon fact discovery deadline out of an abundance of caution.

4. On February 15, 2008, Defendant Star Chrysler/Jeep LLC filed and served a Notice of Deposition of Plaintiff scheduling a deposition for March 4, 2008 at 10:00 a.m. See Dkt. No. 17.

5. On the same date, Plaintiff filed a Motion to Amend the Complaint. See Dkt. No. 18. This motion was later withdrawn and a Stipulation to Amend Complaint was filed with and approved by the Court. See Dkt. Nos. 20 and 22.

6. Defendant's counsel was informed by Plaintiff's then-counsel, that Plaintiff would not appear for the properly-noticed deposition on March 4, 2008.

7. Defendant Star Chrysler/Jeep LLC filed and served on April 15, 2008 a Second Notice to Take Deposition of Plaintiff Matthew Wiley to be conducted on April 28, 2008 at 10:00 a.m. See Dkt. No. 33.

8. On April 28, 2008 at approximately 9:20 a.m., Defendant's counsel received a voicemail message from Plaintiff that he would not be appearing for the deposition. Plaintiff claimed he was ill.

9. At this juncture, Defendants move this Court pursuant to Fed. R. Civ. P. 37 to compel Plaintiff to appear for deposition in this case.

10. While Defendants intend to re-Notice the deposition of Plaintiff prior to the hearing on this Motion, Defendants are placed in a significant quandary due to the repeated

failure and/or refusal of the Plaintiff to appear for properly noticed depositions in this case. This is compounded by the fact that the agreed-upon fact discovery deadline is set to expire.

11. In light of these circumstances, Defendants also request that the Court extend the fact discovery deadline solely for the purposes of completing the deposition of Plaintiff Matthew Wiley since the deposition had been properly noticed to be completed twice before the expiration of the fact discovery deadline.

Waiver of Right to File Brief

12. In light of the routine nature of this Motion, Defendants waive the right to file a brief in support of the Motion. Defendants reserve the right to file a reply to the extent the motion is opposed by Plaintiff.

Certification of Counsel

13. Counsel certifies that due to the time constraints between the date of the deposition (and Plaintiff's failure or refusal to appear) and the fact discovery deadline in this case that there is insufficient time to either obtain a Stipulation from Plaintiff (who is proceeding *pro se* in this case) or to determine Plaintiff's position regarding the relief requested herein. Defendants' only contact with Plaintiff is through a mailing address.

WHEREFORE, Defendants respectfully request that the Court compel Plaintiff Matthew Wiley to appear for a deposition in this case and, to the extent necessary, extend the fact discovery deadline solely to permit the completion of the deposition.

YOUNG CONAWAY STARGATT & TAYLOR, LLP

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Attorneys for Defendants

Dated: April 30, 2008

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FOR THE DISTRICT OF DELAWARE**

MATTHEW WILEY,

PLAINTIFF,

C.A. NO. 07-728 (JJF)

v.

STAR CHRYSLER/JEEP, LLC, NEW
CASTLE INSURANCE, LTD.,
and BLUE CROSS BLUE SHIELD
OF DELAWARE,

DEFENDANTS.

NOTICE OF MOTION

TO: Mr. Matthew Wiley
102 Clover Ct.
Newark, DE 19711-8730

PLEASE TAKE NOTICE that the within DEFENDANTS' MOTION TO COMPEL
DEPOSITION OF PLAINTIFF MATTHEW WILEY AND TO EXTEND FACT DISCOVERY
DEADLINE TO COMPLETE DEPOSITION OF PLAINTIFF MATTHEW WILEY will be
presented to the Honorable Joseph J. Farnan, Jr., United States District Judge, on June 6, 2008 at

YOUNG CONAWAY STARGATT & TAYLOR, LLP

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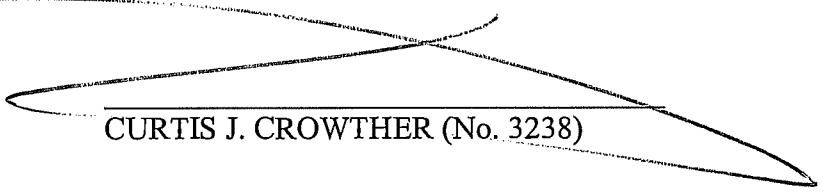
Attorneys for Defendants

Dated: April 30, 2008

CERTIFICATE OF SERVICE

I, Curtis J. Crowther, Esquire, attorney for Defendants, hereby certify that on April 30, 2008, I caused two copies of the foregoing to be served by first class, United States Mail, postage prepaid, on the following party of record:

Mr. Matthew Wiley
102 Clover Ct.
Newark, DE 19711-8730


CURTIS J. CROWTHER (No. 3238)

Dated: April 30, 2008